

Draft Charity Test Guidance
OSCR
2nd Floor
Quadrant House
Riverside Drive
Dundee
DD1 4NY

17 December 2015

Dear Sir,

Draft Charity Trustee Guidance

On behalf of ICSA I am pleased to respond to your draft charity trustee guidance.

ICSA, the governance institute, is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 120 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

We are the professional body qualifying and supporting Chartered Secretaries, corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and corporate governance. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A significant number of our members are involved in the charitable sector and all will be familiar with the legal requirement for charitable organisations to meet the charity test and the need for trustees to understand what that means in practical terms. Our members' wealth of expertise and experience, along with a detailed understanding of charity legislation and regulation, has informed our response to this consultation.



General comments

In general the draft guidance is clear about the message it is trying to articulate and the audience it is trying to reach: providing details to trustees, and their advisers, as to the duties and responsibilities of charity trustees in Scotland. The description and examples of each identified duty could be seen to be aimed at an audience with very little knowledge of trusteeship. ICSA therefore urges the regulator to think about revising existing guidance on specific trustee duties to ensure that those with a better understanding and experience of trusteeship are also provided with appropriately detailed and technical guidance that sits between this draft and the legislation itself.

Due care should be taken to inform readers that fulfilling those duties can be achieved in many more ways than those listed in the document. For example, the information pertaining to conflicts of interests does not deal with the damage that can be done to a charity's reputation from perceived conflicts, only those that are a potential or real risk. The issue of conflicts of interest can be more complicated than presented in the draft document, and it could be argued that there is real benefit to trustees to having a more detailed understanding of the nuances involved.

Furthermore, the document does not specifically mention the legal duties trustees and directors of charitable companies must fulfil. While there may be some overlap in those duties, there are codified legal duties of which trustees of these types of charities should be aware. In fact, there are minor aspects of the draft guidance that do not accurately reflect the legislative framework for charitable companies. For example, the guidance refers to EGMs and the memorandum and articles of association. While the charities incorporated before the 2006 Companies Act may still have the memorandum part this is no longer a legal requirement, and the term 'EGM' is now redundant. While these may be minor inaccuracies, such oversights if left uncorrected could have an adverse impact on the reader's trust and confidence in the guidance.

ICSA appreciates the opportunity to comment on OSCR's draft charity trustee guidance for charities operating in Scotland. Should further information or clarification be required, please do not hesitate to contact me.

Yours faithfully,

Louise Thomson FCIS

Head of Policy (Not-for-Profit)

020 7612 7040

lthomson@icsa.org.uk